IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 12TH JUNE 2007 / 22ND JYAISHTA 1929

Crl.MC.No. 1887 of 2007()

CC.376/2004 of JUDL. MAGISTRATE OF FIRST CLASS COURT-II, TRIVANDRUM

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PETITIONER: PETITIONER

ELIAMMA PERIEIRA,W/O.NAZARETH XAVIER @ A
NTHONY PEREIRA,SHOSAMMA COTTAGE, T.C.XXXIV/1613,
KOCHUTHOPPU,VALLAKKADAVU P.O., PETTAH VILLAGE,
TVM,REP.BY P/A HOLDER,PEREIRA NAZARATH XAVIER @
SRI.ANTHONY PEREIRA,SOSAMMA COTTAGE,T.C.XXXIV/1613
KOCHUTHOPPU,VALLAKKADAVU PO,PETTAH VILLAGE,TVM.

BY ADV. SRI.PIRAPPANCODE V.S.SUDHIR

RESPONDENTS: COUNTER PETITIONER

STATE OF KERALA, REP.BY THE PUBLIC
PROSECUTOR,HIGH COURT OF KERALA, ERNAKULAM
(SUB INSPECTOR OF POLICE,VALIYATHURA POLICE
STATION,THIRUVANANTHAPURAM)

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 12/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.1887 of 2007

Dated this the 12th day of June 2007

O R D E R

The petitioner, through her power of attorney holder, has initiated proceedings against her brother and sister-in-law. The petitioner is a person residing abroad permanently. It is her case that her power of attorney holder is in charge of and managing her properties in India. She, through her power of attorney holder, raised a grievance that the brother and sister-in-law had trespassed into her property, reduced the same into their possession and had removed articles in the said premises. The complaint of the power of attorney holder was investigated by the police and final report was filed raising allegations against the brother and sister-in-law of the petitioner herein.

2. Dissatisfied with the said final report filed by the investigating officers, the petitioner approached the learned Magistrate for a direction to conduct a further investigation under Section 173(8) Cr.P.C. The learned Magistrate, by the impugned order, came to the conclusion that there are no

circumstances justifying the issue of directions under Section 173(8) Cr.P.C. Accordingly, the learned Magistrate proceeded to pass the impugned order.

3. The learned counsel for the petitioner prays that the extraordinary inherent jurisdiction under Section 482 Cr.P.C may be invoked to set aside the impugned order and issue directions under Section 173(8) Cr.P.C. What is the reason? The learned counsel for the petitioner submits that there was omission to raise allegations against the son and daughter-in-law of her brother in the complaint filed by the power of attorney holder. That, it is contended, was an innocuous omission. The power of attorney holder has not conducted necessary enquiries before lodging the complaint. It is only when the petitioner returned from her place of residence abroad that she made necessary enquiries and came to know of the culpable involvement of the son and daughter-in-law of her brother in the incident.

4. The learned Magistrate has passed a well reasoned and long order in which all the relevant aspects have been adverted to and considered. The learned Magistrate, rightly according to me, was not prepared to purchase and swallow the

version advanced by the petitioner belatedly implicating her brother's son and daughter-in-law in the alleged incident.

5. It is, of course, true that a direction for further investigation under Section 173(8) Cr.P.C can be issued by the court accepting the request of the investigating officer, the defacto complainant or the accused. But sufficient reasons must be shown to exist. Such a direction cannot be issued, as a matter of course. The investigating officer, in this case, has not chosen to make any such request. The learned Magistrate went through the relevant materials available and did also come to the conclusion that there are no circumstances justifying the invocation of the powers under Section 173(8) Cr.P.C. I totally concur with the conclusion of the learned Magistrate. I am satisfied that no directions deserve to be issued under Section 173(8) Cr.P.C invoking the extraordinary inherent jurisdiction under Section 482 Cr.P.C.

This Criminal Miscellaneous Case is, in these circumstances, dismissed.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007